IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 1065 of 2001
(Old No. 393 of 1983)

Mazahar Hussain
S/o Sri Zafar Hussain,
R/o Shop No. 175, Tallital,
Nainital.

……Claimant-Appellant

Versus

U.P. State Road Transport Corporation
Through its General Manager,
Nainital.

……. Respondent

Mr. R.S. Bisht, learned counsel for the appellant.
Mr. A.N. Sharma, learned counsel for respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110(D) of the Motor Vehicles Act, 1939, is directed against the judgment and award dated 25.03.1983, passed by the Motor Accident Claims Tribunal / Special Judge, Nainital in the M.A.C. Case No. 25 of 1982, whereby claim petition has been dismissed.

2) Brief facts of the case, are that claimant – appellant, Mazhar Hussain was traveling in bus registration No. UTF / 7545 on 16.10.1981, from Haldwani to Nainital. The bus was owned by respondent U.P. State Road Transport Corporation. It is alleged in the contempt petition that the driver of the bus was rash and negligent in driving the bus, due to which the bus fell into a deep gorge. The claimant suffered grievous injuries in the accident which included fracture in T-10 body vertebra. It is further alleged in the claim petition that the age of the claimant was 41 years at the time when the accident took place and he was earning

Rs.1,000/- per month. He had to remain in the hospital for a long time and even after his discharge from the hospital, he is not fully well. It is further pleaded that claimant is a disabled person and has lost his eye sight due to the accident. A total sum of Rs. 1,38,000/- was claimed as compensation.

3) The respondent, U.P. State Road Transport Corporation, contested the claim petition and filed its written statement in which injuries to the claimant were specifically denied. However, it is denied that the driver was rash and negligent in driving the vehicle in question. It is further pleaded in the written statement that the claimant has sought exorbitant amount of compensation.

4) Learned Tribunal framed following issues during the trial:

1. *Whether, the accident took place due to the rash and negligent driving of the bus registration* No. *UTF / 7545 on the part of its driver.* If so, its effect?
2. *To what amount of compensation, if any, is the claimant entitled?*
3. *Whether, the claim is bad for non-joinder of State of U.P.?*

5) After recording the evidence and hearing the parties, learned Tribunal found that since respondent U.P. State Road Transport Corporation is a statutory body owning the bus, as such, State of U.P. was not a necessary party. It further held that though the claimant suffered injuries in the accident, but since the accident has not occurred due to the

rash and negligent driving on the part of the driver of the bus, as such, the claim petition was liable to be dismissed, and was dismissed. Aggrieved by said order, this appeal has been preferred by the claimant.

6) I heard learned counsel for the parties and perused the record.

7) As far as the occurrence of accident is concerned, the evidence recorded by the trial court is clear on this point that the claimant has suffered injuries in the accident on 16.10.1981. P.W.1, Mazhar Hussain (claimant) has stated that he was traveling on that day in bus registration No. UTF / 7545 and, when the bus reached near Baldiakhan on its way from Haldwani to Nainital, due to the rash and negligent driving on the part of the driver, the bus fell in the gorge. P.W. 1, Mazhar Hussain further stated that he got fracture in his backbone. From the cross examination of this witness nothing has come out which indicates his statement made in examination-in-chief, as doubtful. P.W. 2, Dr. B.P. Sharma, Medical Officer has corroborated the claimant's evidence that after the accident, on X-ray a fracture was found in the backbone of the claimant. In the cross examination, this witness has stated that generally dorsal fracture gets united but he could not say without re-examining the patient and taking fresh X-ray, whether, now in the case of claimant it has been united or not? D.W. 1., Ram Singh, the driver of the vehicle in question has admitted that he was driving the vehicle on the date of the accident but he denies being rash and negligent in driving the vehicle. The Tribunal appears to have been guided by this statement, but copy of the judgment of the same

Presiding Officer of the Motor Accident Claims Tribunal, who delivered his judgment on 24.09.1982, passed in M.A.C. Case No. 22 of 1982; Mathura Datt Nainwal Vs. U.P. State Road Transport Corporation, has allowed the claim petition for a sum of Rs. 1,554/- to another injured of the same accident. Copy of said judgment which has been filed with the affidavit by the appellant in this case, shows that both the cases relate to the same accident occurred on 16.10.1981 and both the passengers were traveling in bus registration No. UTF / 7545 and got injured. In said earlier judgment, the same Tribunal has held that the driver of the bus was rash and negligent in driving the bus. In the circumstances, the subsequent finding of the Tribunal is not sustainable and cannot be said to be just and proper. In view of the evidence on record, as discussed above, this Court has no hesitation in holding that the driver of the bus in question was rash and negligent in driving the bus, and the learned Tribunal has wrongly rejected the claim of the present appellant.

8) As far as the amount of compensation is concerned, P.W. 1 Muzhar Hussain has stated on oath that he spent about Rs. 2,500/- in his medical treatment alone. Apart from this, he has stated that due to the injuries he could not resume his work which affected his earnings. Now only this, the claimant is entitled to compensation for pain an agony suffered by him in the accident. A sum of Rs. 5,000/-, in the facts and circumstances of the case, appear to be just and proper as amount of compensation for the pain and agony suffered by the claimant. In the claim petition, the petitioner has alleged that his monthly earning was Rs. 1,000/-. It is stated in the evidence on oath that for one month, the

claimant remained in hospital, and even thereafter, he could not resume his normal work due to the pain in the backbone. As such, the pecuniary loss suffered by the claimant appears to be Rs. 1,000/-, for the month he remained in the hospital and for further loss in the earning due to the pain in the backbone. In all, Rs. 5,000/- on account of pain and agony suffered by the claimant, Rs. 2,500/- as expenses incurred in the medial treatment, Rs. 1,000/- for pecuniary loss for one month, when the claimant remained in the hospital and Rs. 3,000/- due to the temporary disability, which affected his normal working for about a year, totaling to Rs. 11,500/- is the amount of compensation for which the claim petition should have been allowed by the Tribunal. This Court in appeal, after appreciating the aforesaid evidence finds it just and proper, to allow the appeal and to award the claim petition for Rs. 11,500/- and interest at the rate for 6% per annum thereon, from the date for the application i.e. 07.04.1982, till date.

9) Accordingly, the appeal is allowed. The impugned judgment and award dated 25.03.1983 is set aside. The claim petition is allowed for an amount of Rs. 11,500/- with interest at the rate of 6% per annum thereon w.e.f. 07.04.1982, which shall be paid within one month from today, failing which the respondent shall be liable to pay interest at the rate of 9% per annum thereafter, on the awarded sum.

(Prafulla C. Pant, J.)

Dt. March 07, 2006.
H.Negi